

**REMARKS/ARGUMENTS**

Claims 1, 3, 4, 6-24, 27 and 28 are presently pending in the present application. Claims 7-10, 21 and 22 have been previously allowed. Claims 2, 5, 25 and 26 have been cancelled. Claims 3, 4, 6, 11-17, 24, 27 and 28 have been withdrawn in response to a requirement for restriction. Claims 1, 18 and 23 stand finally rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 3,168,312 to Davis ("Davis"). Claims 19 and 20 stand finally rejected under 35 U.S.C. § 103(a) as being allegedly being unpatentable over Davis.

In view of the Examiner's Answer of January 13, 2004, Applicant submits the foregoing amendments and the following remarks and arguments.

The golf practice and exercise device of the present invention provides a golfer with a strike-able object to promote muscle development without forcing the golfer to concentrate on hitting a small object ( i.e. a golf ball), and also to improve golf swing technique without having to continually retrieve the struck object. (Specification p. 2, lines 2-18). The golf practice and exercise device comprises a frame having a flat base portion and an upright portion extending upwardly from the base portion. (Id. at p. 5, lines 7-9.) A mounting arm projects outwardly from the frame portion over a portion of the base portion. (Id. at lines 9-11.) At the outward end of the mounting arm, an object is suspended so that the object can be struck by a golf clubhead swung by a golfer. (Id. at lines 11-14.) At least a portion of the object is adjacent the floor or ground. (Id. at lines 12-14 and claim 1.) The size of the golf clubhead impact surface of the object is at least that of a conventional softball. (Id. at p. 7 lines 15-17.) The size of the golf clubhead impact surface allows the golfer to swing a golf club without having to concentrate on striking a small target such as a golf ball. (Id. at p. 6 lines 18-20.) The mass of the object is at least that of a conventional softball. (Id. at p. 7 lines 15-19.) The mass of the object provides for

muscle development for increased performance when hitting a golf ball while allowing the clubhead to move under the object for completion of the follow-through of the swing. (Id. at pp. 6-7, lines 20-9.)

The object is suspended from the mounting arm by a flexible cord. (Id. at p. 5, line 12 and claim 18.) The flexible cord is attached to a ring that is freely rotatably mounted at the outward end of the mounting arm so that, when struck, the object, cord and ring rotate about a generally horizontal axis. (Id. at lines 20-22, and claim 21.) The mounting arm is adjustable to a height of between about 1.5 feet and about 5 feet above the base, preferably about 3 feet. (Id. at p. 7 lines 12-14 and claims 19 and 20.) The object may be selectively attached to the base portion of the frame to restrain the object against movement for alternative use of the object as a stop of the golf club in an impact position, thus allowing the golfer to practice a golf swing technique. (Id. at page 8, lines 1-6 and claim 22 and 23.)

The rejection of Claims 1, 18 and 23 pursuant to 35 U.S.C. § 102(b) asserts that “Davis discloses a frame comprising a base, a vertical stand, a horizontal arm attached to the stand, a flexible cord attached to the horizontal arm, and a ball attached to the flexible cord adjacent the ground.” (Final Action, p. 2.) In addition, the rejection asserts that “Davis further discloses the device utilized for balls of differing weights and densities and may be struck with various types of striking implements,” and that Davis describes “softballs and baseballs” as examples of larger types of balls “that can be accommodated by the device.” (Id.)

Applicant agrees that the apparatus disclosed by Davis may be used with a variety of ball types, including tennis balls, baseballs and softballs. (Col. 1, lines 63-71.) Significantly, however, Davis fails to disclose the use of a striking implement, designed for use in one sport, to strike balls from a different sport, wherein the ball is specifically selected to be of a type having

very different characteristics from those of the ball with which the striking implement is intended to be used. In other words, although Davis discloses the use of golf clubs (to hit golf balls) and tennis rackets (to hit tennis balls), Davis does not disclose the use of golf clubs to hit tennis balls. In the Final Action dated May 23, 2003, the Examiner admits as much, agreeing with Applicant's argument ("[Davis] does not teach or disclose utilizing a ball of a weight and size for one sport being used to practice another sport") (Final Action, p. 4).

This distinction is very important. The apparatus of the present invention includes an object having the size and mass of a softball positioned near the ground in order to be struck with a golf club. Davis does not disclose the placement of a softball near the ground. Instead, the only softball position that is even implied by Davis is the traditional one—i.e., the height above the ground at which a softball is normally struck. Applicant submits that disclosing the use of a softball does not teach or even suggest any placement for such softball other than the conventional one, and Applicant respectfully requests that the Examiner identify such teaching in Davis if such rejection is to be made.

Although Applicant believes such a physical structure or arrangement is sufficient by itself to overcome the Davis reference, Applicant has nonetheless amended the claims to include, as part of the claimed apparatus, the golf club itself. Clearly, Davis does not disclose an apparatus combining a golf club with a softball, or with any object the size and mass of a softball.

In her Answer dated January 13, 2004, the Examiner argues that Fig. 1 of Davis discloses an object suspended in a position adjacent the ground. Once again, however, the Examiner has ignored the fact that Davis teaches only the placement of a golf ball adjacent the ground. It is

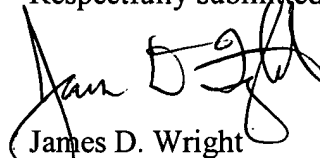
precisely this inventive feature that distinguishes the present invention. from the prior art in the first place.

With further particular regard to Claim 23, Applicant is frustrated at the Examiner's refusal to recognize that Claim 23 includes the claim limitation that the softball-sized object is "secured to and extending between said mounting arm and said base in position for striking by a golf clubhead during a normal golf swing and stopping the golf clubhead in an impact position." In her Answer to Applicant's second Appeal Brief, the Examiner states that "as currently written claim 23, does not require the object to be secured to base." As evidenced by the quoted language, the claimed object clearly does have to be secured to the base, and Applicant is dismayed at the Examiner's refusal to recognize this limitation. Applicant submits that if properly recognized, this limitation is clearly not disclosed by Davis, and thus such rejection is improper and should be withdrawn.

In summary, Davis does not disclose any device for practicing golf or any other sport in which any object, other than a golf ball, is arranged to be positioned adjacent the ground, and clearly does not disclose any such device that includes a golf club in combination with a softball-sized object placed adjacent the ground. Applicant once again requests that the Examiner identify this combination in the prior art or to withdraw her rejection thereof.

For all of the aforementioned reasons, it is respectfully submitted that the rejections in this application be reversed and that the pending claims be found allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James D. Wright", is written over the typed name.

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